

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1816 of 2001
With
CROSS OBJECTION No. 102 of 2002
In
FIRST APPEAL No. 1816 of 2001

For Approval and Signature:**HONOURABLE MR.JUSTICE KS JHAVERI**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of
the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the constitution of
India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ORIENTAL INSURANCE CO. LTD. - Appellant(s)

Versus

MANIBEN MAGJI HARIJAN WD/O LATE MEGJI TETHABHAI
HARIJAN & 7 - Defendant(s)

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Appearance :

MR DEEPAK M SHAH for Appellant(s) : 1,

MR MEHUL S SHAH for Defendant(s) : 1 - 6.

MR SURESH M SHAH for Defendant(s) : 1 - 6.

- for Defendant(s) : 0.0.0

- for Defendant(s) : 0.0.0

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/03/2012

ORAL JUDGMENT

1. In connection with the vehicular accident that took place on 08.02.1999 in which Megji Jethabhai Harijan expired, the legal heirs of deceased preferred claim petition being M.A.C.P. No.653/1999 u/s.163-A of the Motor Vehicles Act before the Motor Accident Claims Tribunal (Main), Kachchh at Bhuj. The said claim petition was allowed in part by judgment and award dated 06.11.2000. Being aggrieved by the same, the appellant-Insurance Company has preferred the present appeal.

2. It has been mainly contended on behalf of the appellant-Insurance Company that though specific contention regarding liability, negligence and other submissions were raised before the Tribunal, the same were not appreciated in its proper perspective. Reliance has been placed on the decision of the Apex Court in the case of **National Insurance Co. v. Sinitha and others, (2012) 2 SCC 356 [2011 (13) SCALE 84]** and it has been prayed that the matter be remanded to the Tribunal concerned.

3. Considering the facts of the case and in view of the principle rendered in *Sinitha's* case (supra), it would be

appropriate that the Tribunal re-considers the matter. Consequently, the impugned judgment and award is quashed and set aside and the matter is remanded to the Tribunal concerned for consideration afresh in light of the decision rendered in *Sinitha's* case (supra). Both the sides shall be at liberty to adduce evidence, which shall be duly considered by the Tribunal in view of the decision referred to herein above. Until the claim petition is decided, the Tribunal concerned shall invest the entire amount lying with it in FDR and interest accruing thereon shall be permitted to be accumulated. The entire amount with interest shall be disbursed in favour of the party, who finally succeeds in the claim petition, after giving necessary set-off against any payments that may have been made earlier. The Tribunal concerned shall decide the claim petition within a period of Two Years from the date of receipt of writ of this order. The appeal as well as cross objection stand disposed of accordingly. No order as to costs.

[K.S. JHAVERI, J.]

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